

## MONTANA POLLUTANT DISCHARGE ELIMINATION SYSTEM (MPDES) PERMIT

### FACT SHEET

#### General Permit for Concentrated Animal Feeding Operations (CAFO GP)

FACILITY: Concentrated Animal Feeding Operations (CAFOs)

PERMITEES: Owners and Operators of CAFOs

PERMIT NO.: MTG010000

LOCATION: Statewide

CONTACT: Applicant

RECEIVING WATER: Statewide

#### PART I. Status of Permit

The previous Montana Pollutant Discharge Elimination System (MPDES) General Permit for Concentrated Animal Feeding Operations (CAFO GP) was issued by the Montana Department of Environmental Quality (Department), effective August 15, 2000. The August 15, 2000 CAFO GP expired at midnight on July 31, 2005, at which time coverage under the August 15, 2000 CAFO GP was administratively extended for those facilities who had previously been covered, and who had applied for renewed permit coverage according to the requirements in the August 15, 2000 CAFO GP. Additionally, a small number of owners and operators of new and/or previously unpermitted facilities were issued authorizations to discharge under the August 15, 2000 CAFO GP, pending the reissuance of a CAFO GP.

#### PART II. Description of Discharge and Discharging Facilities

The CAFO GP is applicable to discharges of manure, process wastewater, and other wastes from concentrated animal feeding operations (CAFOs) in the State of Montana, excluding discharges from CAFOs on Indian lands, to state waters.

The terms "manure," and "process wastewater" are defined in Title 40, Chapter I, Part 122, Subpart 23 of the Code of Federal Regulations (40 CFR 122.23), and include the following:

Manure: manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

Process wastewater: water directly or indirectly used in the operation of an animal feeding operation for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other animal feeding operation facilities; direct contact swimming, washing, or spray cooling of animals; dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

The term “other wastes” is defined at Title 75, Chapter 5, Part 103 of the Montana Code Annotated (75-5-103, MCA). In the context of the CAFO GP, the term “other wastes” includes garbage, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, solid waste, and all other substances that may pollute state waters.

The term “concentrated animal feeding operation” is defined at 40 CFR 122.23, and includes animal feeding operations defined and/or designated as CAFOs.

The term “state waters” is defined at 75-5-103, MCA. "State waters" means a body of water, irrigation system, or drainage system, either surface or underground. The term does not apply to ponds or lagoons used solely for treating, transporting, or impounding pollutants, or to irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

Based on Department experience and information related to CAFOs, without adequate control, discharges from CAFOs can cause pollution of state waters. Wastes discharged from CAFOs can impact both surface and ground water resources. Discharges of CAFO wastes to surface water can harm both human and aquatic life. They may also harm livestock and wildlife who obtain drinking water directly from state surface waters. Discharges to surface water can result in long-term and short-term economical damage to the Montanans whose livelihoods depend on the quality and availability of state surface waters (e.g. farmers, ranchers, members of the tourism industry, drinking water suppliers, etc). They may also cause long-term damage to the aesthetic qualities of state waters. Discharges of CAFO wastes to ground waters can damage or destroy drinking water resources, and can cause damage to hydrologically connected surface waters.

### PART III. Coverage

Pursuant to 75-5-402, MCA and requirements found in ARM Title 17, Chapter 30, the Department of Environmental Quality (Department) regulates discharges associated with CAFOs. ARM 17.30.1330 requires MPDES permit coverage for discharges from CAFOs.

Owners and operators of Montana animal feeding operations, whose operations meet the definition of a CAFO as defined at 40 CFR 122.23 or are designated as a CAFO as described at 40 CFR 122.23 are eligible for coverage under the CAFO GP. Owners and operators of new and existing CAFOs are authorized under the terms and conditions of the CAFO GP upon the submittal of a complete application (Form 2B, Form NMP, applicable fees), completion of a public comment period for their site-specific nutrient management plan, completion of any necessary review under the Montana Environmental Policy Act, and issuance of an authorization by the Department to discharge under the CAFO GP. Permittees must retain on site a copy of the permit and the authorization letter.

There are currently 90 facilities proposed for coverage under the CAFO GP. The operations include cow-calf operations, feedlots for cattle, sheep and horses, sale and shipping yards, and hog and poultry facilities. The total confinement area is approximately 1,500 acres. Waste is typically removed annually from dry lot operations and then land-applied as solids with facility-owned or contracted manure-spreading equipment. Liquid wastes are stored in retention basins or holding tanks. Basins are either earthen, clay, or synthetically lined. Holding tanks are of glass fused to steel, or concrete construction. Liquids are typically surface-applied by applicator tank trucks, injected into the subsoil with tractor-drawn toolbars or piped through irrigation delivery systems after solids separation. The total retention capacity of the 90 operations is approximately 300 million gallons.

The 90 CAFOs that have submitted applications are a portion of the total number of operations within the state that meet the point source description of a CAFO. Voluntary applications and water quality complaint investigations will generate from five to 10 applications during each of the five years of the permit term. The Department is currently refining a statewide inventory of all CAFOs that may need permit coverage but do not have permit coverage. Preliminary estimates suggest that this may identify as many as 300 additional facilities that would be eligible for coverage under the CAFO GP.

### PART IV. Exclusions

#### A. Denial of Authorization

Under the following provisions of ARM 17.30.1341(4), the Department may deny authorization to discharge under the CAFO GP:

1. The specific source applying for authorization appears unable to comply with the following requirements:
  - a. Effluent standards, effluent limitations, standards of performance for new sources of pollutants, toxic effluent standards and prohibitions, and pretreatment standards.
  - b. Water quality standards established pursuant to 75-5-301, MCA.
  - c. Prohibition of discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.
  - d. Prohibition of any discharge which the secretary of the army acting through the chief of engineers finds would substantially impair anchorage and navigation.
  - e. Prohibition of any discharges to which the regional administrator has objected in writing.
  - f. Prohibition of any discharge which is in conflict with a plan or amendment thereto approved pursuant to section 208(b) of the Federal Clean Water Act.
  - g. Any additional requirements that the department determines are necessary to carry out the provisions of 75-5-101, et seq., MCA.
2. The discharge is different in degree or nature from discharges reasonably expected from sources or activities within the category described in the CAFO GP.
3. An MPDES permit or authorization for the same operation has previously been denied or revoked.
4. The discharge sought to be authorized under the CAFO GP is also included within an application or is subject to review under the Major Facility Siting Act, 75-20-101, et seq., MCA.
5. The point source will be located in an area of unique ecological or recreational significance. Such determination must be based upon considerations of Montana stream classifications adopted under 75-5-301, MCA, impacts on fishery resources, local conditions at proposed discharge sites, and designations of wilderness areas under 16 USC 1132 or of wild and scenic rivers under 16 USC 1274.

B. CAFOs on Indian Lands

Discharges from CAFOs located on Indian lands within the State of Montana are not eligible for coverage under the CAFO GP. The United States Environmental

Protection Agency (EPA) regulates discharges from CAFOs on Indian lands in Montana.

#### PART V. Receiving Waters and Applicable Standards

The CAFO GP only covers discharges of wastes from eligible CAFOs regulated by this permit to state waters as defined in 75-5-103(29), MCA.

The Montana Water Quality Act requires that permits issued pursuant to Title 17, Chapter 30, Subchapter 13 comply with the Montana surface water quality standards found in Title 17, Chapter 30, Subchapter 6.

Title 17, Chapter 30, Subchapter 10 specifies the standards for discharges to groundwater.

New or increased sources (ARM 17.30.702(16)), must comply with Montana's Nondegradation Policy (75-5-303, MCA), and rules (ARM 17.30.701 et. seq.). Nondegradation requirements are discussed in Part IX of this Fact Sheet.

#### PART VI. Proposed Effluent Limitations and Conditions

The effluent limitations and other requirements included in the CAFO GP are based on the effluent limitations guidelines (ELGs) established at 40 CFR 412 and the Montana Technical Standards for Concentrated Animal Feeding Operations found in Department Circular DEQ 9 (February 2006). In general, the ELGs and Department Circular DEQ 9 (February 2006) establish guidelines and technical standards for Large CAFOs.

The effluent limitations and standards in "A" below apply to discharges from the production area, as defined in 40 CFR 122.23(b)(8). These effluent limitations and standards apply to all facilities covered by the CAFO GP. It is the Department's position that these limitations and standards, in conjunction with the other terms and conditions of the CAFO GP, represent the practices and prohibitions necessary in order for an eligible CAFO to prevent discharges of wastes from the production area, to state waters, that would cause an exceedence of a Montana water quality standard.

##### A. Effluent Limitations and Standards – Production Area

There shall be no discharge of manure, litter, or process wastewater pollutants from the production area into state waters except as provided for below.

Whenever precipitation causes an overflow of manure, litter, or process wastewater, pollutants in the overflow may be discharged to state waters provided:

1. For new and existing dairy and cattle operations, other than veal, the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event. The applicable rainfall value for the location of the CAFO operation subject to this requirement is determined from the 25-year, 24-hour rainfall map given in Attachment 1 to Department Circular DEQ 9 (February 2006).
2. For new swine, poultry, and veal calf operations, the production area is designed, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 100-year, 24-hour rainfall event. The applicable rainfall value for the location of the CAFO operation subject to this requirement is determined from the 100-year, 24-hour rainfall map given in Attachment 1 to Department Circular DEQ 9 (February 2006);
3. All animal waste management systems or components constructed after February 23, 2006 conform to the standards set forth in Department Circular DEQ 9 (February 2006); and
4. The production area is operated in accordance with the additional measures and record-keeping requirements specified in Part III and IV of this permit.

The effluent limitations and standards in “B” below apply to discharges from the land application area, as defined in 40 CFR 122.23(b)(3). These effluent limitations and standards apply to all facilities covered by the CAFO GP. It is the Department’s position that these limitations and standards, in conjunction with the other terms and conditions of the CAFO GP, represent the practices and prohibitions necessary in order for an eligible CAFO to prevent discharges of wastes from the land application area, to state waters, that would cause an exceedence of a Montana water quality standard. By only allowing discharges in accordance with a site-specific nutrient management plan (NMP), these limitations and standards take into account the wide variability in the characteristics of individual land application areas scattered throughout Montana. NMPs specify the best management practices (BMPs) that a particular CAFO does and will employ in order to prevent harmful discharges to state waters as a result of land application of wastes.

**B. Effluent Limitations and Standards – Land Application Area**

There shall be no discharge of manure, litter, or process wastewater to state waters from the land application area under the control of the CAFO owner or operator, except, if the facility has developed and implemented a Nutrient Management Plan (NMP) in accordance with Part IV.A of this permit and, as applicable, Part III.D of this permit.

C. Special Conditions

The requirement for all CAFOs covered under the CAFO GP to develop and implement a nutrient management plan is included per 40 CFR 122.42(e)(1). The specific nutrient management plan conditions are based on the requirements in 40 CFR 122.42(e)(1), the effluent limitations guidelines (ELGs) established at 40 CFR 412, and the Montana Technical Standards for Concentrated Animal Feeding Operations found in Department Circular DEQ 9 (February 2006).

The facility closure conditions are included in the CAFO GP based on the duty to maintain permit coverage requirement in 40 CFR 122.23(h).

D. Standard Conditions

The standard conditions included in the CAFO GP are based on the standard conditions in ARM 17.30.1342 and include conditions required pursuant to 75-5-402(1), MCA.

It is the Department's position that the effluent limitations and standards listed above, in combination with the other terms and conditions of the CAFO GP, represent the practices and prohibitions necessary in order for an eligible CAFO to comply with Montana's surface water quality standards and with Montana's Water Quality Act.

PART VII. Self-Monitoring Requirements

Part III of the CAFO GP includes monitoring, reporting and recordkeeping requirements. It includes requirements to monitor and report discharges to state waters, as well as requirements to monitor and report instances of noncompliance with permit conditions. Part III of the CAFO GP also contains annual reporting requirements, and requirements to monitor and record the implementation of the facility's site-specific nutrient management plan. It also includes records retention requirements. 75-5-602, MCA of the Montana Water Quality Act provides the authority for the requirements in Part III of the CAFO GP.

PART VIII. Mixing Zones

A mixing zone is an area where the effluent mixes with the receiving water and certain water quality standards may be exceeded (ARM 17.30.502(6)). It is the Department's position that the effluent limitations and standards in the CAFO GP, in combination with the other terms and conditions of the CAFO GP, represent the practices and prohibitions

necessary in order for an eligible CAFO to comply with Montana's surface water quality standards. Pursuant to Part I.C of the CAFO GP, if a source applying for coverage under the CAFO GP appears unable to comply with Montana's water quality standards, coverage under the CAFO GP may be denied. Therefore, granting of a mixing zone is not warranted. Facilities which cause or contribute to a violation of a water quality standard cannot meet the conditions of the CAFO GP, and must apply for an individual MPDES permit.

#### PART IX. Nondegradation

75-5-317(2)(t), MCA states that any other activity that is nonsignificant because of its low potential for harm to human health or the environment and its conformance with the guidance found in 75-5-301(5)(c), MCA is not subject to the provisions of Montana's Nondegradation Policy (75-5-303, MCA). Pursuant to 75-5-301(5)(c), MCA, ARM 17.30.715 contains the criteria used to determine whether certain activities or classes of activities will result in nonsignificant changes in existing water quality due to their low potential to affect human health or the environment.

The effluent limitations in Part II of the CAFO GP prohibit discharges to surface water except as a result of rare, large precipitation events. The Department believes that based on the characteristically, naturally large volume of water found in receiving streams under such conditions, that the volume of wastes discharged would not have a significant effect upon the downstream flow in the receiving water.

As stated in PART VIII of this Fact Sheet, granting of a mixing zone in conjunction with coverage under the CAFO GP is not warranted. Facilities which cause or contribute to a violation of a water quality standard cannot meet the conditions of the CAFO GP, and must apply for an individual MPDES permit.

Based on the criteria in ARM 17.30.715, the Department has determined that discharges allowed by the CAFO GP are nonsignificant, and are therefore not subject to the provisions of Montana's Nondegradation Policy.

#### PART X. Total Maximum Daily Load (TMDL)

On September 21, 2000, a U.S. District Judge issued an order stating that until all necessary TMDLs under Section 303(d) of the Clean Water Act are established for a particular water quality limited segment (WQLS), the State is not to issue any new permits or increase permitted discharges under the MPDES program. The order was issued in the lawsuit *Friends of the Wild Swan v. U.S. EPA, et al.*, CV 97-35-M-DWM, District of Montana, Missoula Division. The Department believes that the issuance of new authorizations under the CAFO GP does not conflict with this order because the CAFO GP is not a new permit and does not allow an increase in pollutant loads.



PART XI. Procedure for Coverage Under The CAFO GP

- A. Eligible sources that apply for coverage **after the effective date** of this general permit are covered under this general permit after the following has occurred:
1. The applicant has submitted a Form 2B that has been completed to the satisfaction of the Department; and
  2. The applicant has submitted all applicable fees; and
  3. The applicant has submitted a Nutrient Management Plan (NMP) using Form NMP. Form NMP must be completed to the satisfaction of the Department; and
  4. The Department completes all applicable reviews necessary for the Department to comply with the Montana Environmental Policy Act (MEPA); and
  5. Form NMP has been made available for public comment for a period of at least 30 days; and
  6. The Department issues an authorization letter to the applicant to discharge under the CAFO GP.
- B. Eligible sources that apply for coverage prior to the effective date of this general permit are covered under this general permit after the following has occurred:
1. The applicant has submitted a correct version of Short Form B, completed to the satisfaction of the Department (note: the “correct version” is the version in use by the Department upon the date that the Department received the application); and
  2. The applicant has submitted all applicable fees; and
  3. As requested by the Department, the applicant has submitted an updated application, (using Form 2B) that reflects the current nature and operation of the facility; and
  4. The applicant has submitted a Nutrient Management Plan (NMP) using Form NMP. Form NMP must be completed within 90 days after the effective date of this CAFO GP, and must be completed to the satisfaction of the Department; and

5. Form NMP has been made available for public comment for a period of at least 30 days; and
6. The Department completes all applicable reviews necessary for the Department to comply with the Montana Environmental Policy Act (MEPA); and
7. The Department issues an authorization letter to the applicant to discharge under the CAFO GP.

This material must be submitted to:

Department of Environmental Quality (DEQ)  
Water Protection Bureau  
P.O. Box 200901  
Helena, MT 59620-0901

Incomplete or unsigned applications or NMP forms will be returned.

The Department will make the NMP available for public comment for a minimum of 30 days. Thirty days following close of the public comment period; the Department will issue a letter of authorization approving the NMP, or notify the applicant to revise and submit an updated NMP.

Permittees covered under the August 15, 2000 General Permit (MTG010000) maintain coverage under the reissued permit unless notified by the Department that coverage has been terminated. Permit coverage may be terminated based on any of the following:

1. Failure to submit a NMP as required by the Permit;
2. Failure to meet the eligibility criteria of Part I of this permit; or
3. Failure to meet the requirement of 75-5-802(3), MCA.

It is the Department's position that the requirement of current permittees to submit a complete nutrient management plan (Form NMP) within 90 days after the effective date of the CAFO GP, to be followed by completion of a public comment period of at least 30 days, is warranted based on the following rationale:

1. The current National Pollutant Discharge Elimination System (NPDES) requirements require submittal of the NMP by February 27, 2009. (See 40 CFR, 122 and 412); however,
2. In 2005, the United States second circuit court handed down the Waterkeeper decision, which required that the terms and conditions of the site-specific nutrient management plan be included as enforceable

provisions of NPDES, CAFO permits, and that the terms and conditions of the nutrient management plan be subject to the public participation requirements applicable to NPDES, CAFO permits; and,

3. The EPA is still working on plans to address the Waterkeeper decision; therefore,
4. In order to maintain the continuity of Montana's program for issuing discharge permits to CAFO owners and operators, the Department intends to implement an equitable compromise (aka the 90-day submission requirement followed by a public comment period of at least 30 days), based on the authority granted in 75-5-402, MCA of the Montana Water Quality Act.

C. Transfers

This permit may be automatically transferred to a new permittee if:

1. The current permittee notifies the Department at least 30 days in advance of the proposed transfer date;
2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them;
3. The Department does not notify the existing permittee and the proposed new permittee of an intent to revoke or modify and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part IV.M.2 of this permit; and
4. Required annual and application fees have been paid.

PART XII. Procedures for Reaching a Final Decision on Draft Permit MTG010000

A. Public Notice and Comment Period - Documents

1. The following documents will be public noticed for a period of 45 days, beginning Monday, April 21, 2008 and ending at the close of business on Wednesday, June 4, 2008:
  - a. The draft General Permit for Concentrated Animal Feeding Operations (CAFO GP), Permit No. MTG010000; and
  - b. The draft Fact Sheet for the General Permit for Concentrated Animal Feeding Operations (CAFO GP), Permit No. MTG010000; and

- c. The draft Form NMP, “Nutrient Management Plan Associated With Concentrated Animal Feeding Operations (CAFO)” nutrient management plan template; and
  - d. The draft Environmental Assessment for the General Permit for Concentrated Animal Feeding Operations (CAFO GP), Permit No. MTG010000; and
  - e. The draft Form CAFO AR, “CAFO Annual Report Form”.
2. During the public notice period described above, comments on the five documents will be received at the following postal address:

Department of Environmental Quality  
Water Protection Bureau  
P.O. Box 200901  
Helena, Montana 59620-0901

Comments may be emailed to the Department at [WPBPublicNotices@mt.gov](mailto:WPBPublicNotices@mt.gov), or faxed to the Department at (406) 444-1374. All comments must be received by the Department by the close of business on June 4, 2008.

3. The Department will follow the public notice procedures in ARM 17.30.1372 as applicable.

**B. Public Notice of Hearings To Be Held**

1. The Department will hold public hearings at the following dates, times, and locations:
- a. May 22, 2008  
6:30 pm  
Great Falls  
Fish, Wildlife and Parks Building  
4600 Giant Springs Rd.  
Great Falls, MT
  - b. May 27, 2008  
1:30 pm  
Helena  
Room 111, Metcalf Building  
1520 East Sixth Ave.  
Helena, MT

c. May 28, 2008  
6:30 pm  
Billings  
Lewis and Clark Room  
Student Union Building  
MSU-Billings  
1500 University Drive  
Billings, MT

2. At least 30 days before each of the public hearings, the Department will give public notice according to the public notice procedures in ARM 17.30.1372 as applicable.
3. Public hearings will be conducted following the procedures set forth in ARM 17.30.1374.

C. Conditions Requested by Government Agencies

If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advises the Department in writing that the imposition of specified conditions upon the CAFO GP is necessary to avoid substantial impairment of fish, or wildlife resources, the Department may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the Montana Water Quality Act.

D. Response to Public Comments

Following the public comment period and the public hearings, the Department will make a final permit decision. At the time that the final permit decision is issued, the Department will issue a response to comments received during the public comment period and the public hearings. The response will specify which provisions, if any, of the draft permit and other publicly noticed materials have been changed in the final permit/other materials, and the reasons for the change(s). The response to comments will also briefly describe and respond to all significant comments raised during the public comment period and hearings.

E. For Additional Information

For additional information concerning the CAFO GP, or the information, documents, and procedures discussed in this Fact Sheet, please contact Tom Reid, Permitting Section Supervisor, at (406) 444-5329, or the Water Protection Bureau at (406) 444-3080. Note: comments pertaining to the public comment period may not be submitted over the phone.

PART XIII. References / Information Sources

- (1) Administrative Rules of Montana, Title 17, Chapter 30, Subchapters 1, 2, 3, 5, 6, 7, 10, 11, 12, and 13
- (2) Montana Code Annotated, Title 75, Chapter 5
- (3) Code of Federal Regulations, Title 40, Chapter 1, Parts 122, 124, 125, 129, 136, and 412
- (4) United States Code, 16 USC 1132 and 16 USC 1274
- (5) United States Clean Water Act, Sections 208(b), 303(d), and 402(a)(1)
- (6) Department Circular DEQ 9, Montana Technical Standards for Concentrated Animal Feeding Operations, February 2006
- (7) United States Environmental Protection Agency (EPA) "NPDES Permit Writers' Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations," December 31, 2003
- (8) U.S. EPA NPDES Permit Writers' Manual, December 1996
- (9) Prior MPDES Permit MT-G010000, effective date August 15, 2000
- (10) Fact Sheet for prior MPDES Permit MT-G010000, effective date August 15, 2000
- (11) New MPDES Permit MTR100000, effective date April 16, 2007
- (12) Fact Sheet for new MPDES Permit MTR100000, effective date April 16, 2007
- (13) Draft Fact Sheet for draft new MPDES Permit MTG490000

Prepared by: Mark Ockey – April, 2008